

## **REMARKS**

### **I. Incorporation by Reference of Prior Arguments**

By way of this Response, Applicants re-assert and incorporate by reference their prior arguments before the Office, including those arguments made in the responses submitted on October 8, 2008, March 26, 2008, March 24, 2009, and September 10, 2009.

### **III. Claims**

Claims 1-10 are currently pending and stand rejected. By way of this Response, Claims 1-9 have been amended, and Claims 11-20 have been added. Support for the amendment can be found throughout the specification. No new matter is presented by way of this amendment.

### **IV. Summary of the October 23, 2009 Office Action**

In the October 23, 2009 Office Action, the Office set forth the following rejections:

- (a) Claims 1, 2, and 10 were rejected under 35 § U.S.C. 103 (a) as being obvious over U.S. Patent No. 6,723,076 (“Strobel”) in view of U.S. Patent No. 5,228,782 (“Imer”);
- (b) Claims 3 and 5 were rejected under 35 § U.S.C. 103 (a) as being obvious over Strobel in view of Imer, further in view of U.S. Patent No. 4,632,267 (“Fowles”);
- (c) Claim 4 was rejected under 35 § U.S.C. 103 (a) as being obvious over Strobel in view of Imer, in view of Fowles, further in view of U.S. Patent No. 5,494,170 (“Burns”);
- (d) Claims 6-8 were rejected under 35 § U.S.C. 103(a) over Strobel in view of Imer, in view of Fowles, further in view of U.S. Patent No. D456,507 (“LeMarr”); and
- (e) Claim 9 was rejected under 35 § U.S.C. 103(a) over Strobel in view of Imer, in view of Fowles, further in view of U.S. Patent No. 6,364,143 (“Knierbein”).

### **V. The Rejections Under 35 U.S.C. § 103 Should Be Withdrawn.**

The Office rejected independent Claim 1 and dependent claims 2 and 10, which depend on independent Claim 1, as obvious under 35 § U.S.C. 103 (a) over Strobel in view of Imer. The Office also rejected dependent Claims 3 and 5, which depend from independent Claim 1, as

obvious under 35 U.S.C. § 103 over Strobel in view of Imer and Fowles. The Office additionally rejected dependent Claim 4, which depends from independent Claim 1, as obvious under 35 U.S.C. § 103 over Strobel in view of Imer, Fowles, and Burns. The Office further rejected dependent Claims 6 - 8, which depend from independent Claim 1, as obvious under 35 U.S.C. § 103 over Strobel in view of Imer, Fowles, and LeMarr. Finally, the Office rejected dependent Claim 9, which depends from independent Claim 1, as obvious under 35 U.S.C. § 103 over Strobel in view of Imer, Fowles, and Knierbein. The Applicants respectfully submit that no *prima facie* case of obviousness has been established because the Office has not demonstrated that the references, regardless if combined, teach or suggest all of the limitations of the claimed invention.

To establish a *prima facie* case of obviousness, three basic criteria must be met. M.P.E.P. § 2143. First, there must be an apparent reason why a person of ordinary skill would have combined the prior art elements in the manner claimed. *KSR Int'l v. Teleflex, Inc.*, 127 S.Ct. 1727, 1741 (2007). Second, there must be a reasonable expectation of success. *See* Exam. Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR Int'l Co. v. Teleflex, Inc.*, 72 Fed. Reg. 57530 (Oct. 10, 2007). Third, the references, when combined, must teach or suggest all the claim limitations or the Office must explain why the shortcomings of the prior art would have been obvious. *Id.* at 57528.

The burden of establishing a *prima facie* case of obviousness lies with the PTO. In determining obviousness, one must focus on the invention as a whole. *Symbol Technologies Inc. v. Opticon, Inc.*, 935 F.2d 1569, 1577-78 (Fed. Cir. 1991). The primary inquiry is: “[w]hether the prior art would have suggested to one of ordinary skill in the art that this process should be carried out and would have had a reasonable likelihood of success ... Both the suggestion and the expectation of success must be found in the prior art, not the applicant’s disclosure.” *In re Dow Chemical*, 837 F.2d 469, 473, 5 U.S.P.Q. 2d 1531 (Fed. Cir. 1988).

Strobel fails to teach or suggest each and every element of independent Claim 1. Primarily, as the Examiner notes, Strobel fails to teach a connector comprising an elastically deformable connecting part with a non-circular cross-section. Furthermore, Strobel fails to teach the present invention of a connector part that can be pinched to prevent leakage after filling. Instead, Strobel teaches a clamp that can be used on a delivery tube to ensure that during fluid delivery there is no back flow through the delivery tube back into the bag. (Strobel 5:54-6:6).

Moreover, Strobel actually teaches away from the present invention, as Strobel teaches a method that preserves a bag's sterility when withdrawing liquids because the user does not puncture or insert an object into the bag. (Strobel 1:47-53). By contrast, the present invention requires a spike to be inserted into at least the connector portion of the bag in order to withdraw fluids, puncturing a membrane in the process. (Appl. at [38]-[39]). Therefore, not only does Strobel teach away from the present invention, but there would be no motivation to combine Strobel with a bag system that requires or allows puncturing or inserting an object into the bag to withdraw liquids.

The deficiencies of Strobel are not cured by Imer. Imer fails to teach a connector comprising an elastically deformable connecting part with a non-circular cross-section which can be pinched to prevent leakage after filling, before a closure part is attached. By contrast, Imer teaches resealing a flexible sachet by folding the sachet at a 45 degree angle, and then inserting it into a holding slit that has been built into the sachet. (Imer 3:19-26). Imer fails to teach a connecting part with a pinching off part which can be pinched with a pinching device. Instead, Imer teaches and requires folding the satchel to seal it, rather than pinching it with a pinching device. (Imer 4:12-18).

As such, one of ordinary skill in the art, when reading Strobel in view of Imer would not be taught or suggested to develop a connector comprising an elastically deformable connecting part with a non-circular cross-section that can be pinched to prevent leakage after filling. Furthermore, there would be no motivation to combine Strobel with any prior art that teaches puncturing a seal on a bag or inserting any withdrawal tool into the bag to withdraw liquids. Thus, even if Strobel were combinable with Imer, which the Applicants deny, Applicants submit that such a combination fails to teach or suggest all the elements of independent Claim 1 and dependant Claims 2 and 10. Therefore, the Applicants respectfully request that the rejection of Claims 1, 2, and 10 under 35 U.S.C. § 103(a) be withdrawn. The patentability of independent Claim 1 also establishes the patentability of dependant Claims 3-9. Accordingly, the Applicants also respectfully request that the rejection of Claims 3-9 under 35 U.S.C. § 103(a) be withdrawn.

## **CONCLUSION**

For at least the foregoing reasons, it is respectfully submitted that Claims 1-20 are in condition for allowance. Early and favorable consideration is respectfully requested, and the

Examiner is encouraged to contact the undersigned with any questions or to otherwise expedite prosecution.

Further, none of Applicants' amendments or cancellations are to be construed as dedicating any such subject matter to the public, and Applicants reserve all rights to pursue any such subject matter in this or a related patent application.

Respectfully submitted,

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